

110TH CONGRESS
1ST SESSION

S. 94

To protect the welfare of consumers by prohibiting price gouging by merchants with respect to gasoline or petroleum distillates during certain abnormal market disruptions.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 2007

Mr. STEVENS introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To protect the welfare of consumers by prohibiting price gouging by merchants with respect to gasoline or petroleum distillates during certain abnormal market disruptions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Gasoline Consumer Anti-price-gouging Protection Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Protection of consumers against price gouging.
- Sec. 3. Justifiable price increases.

Sec. 4. Emergency proclamations and orders.
 Sec. 5. Enforcement by Federal Trade Commission.
 Sec. 6. Penalties.
 Sec. 7. Definitions.
 Sec. 8. Effective date.

1 **SEC. 2. PROTECTION OF CONSUMERS AGAINST PRICE**
 2 **GOUGING.**

3 It is unlawful for any supplier to increase the price
 4 at which that supplier sells, or offers to sell, gasoline or
 5 petroleum distillates in, or for use in—

6 (1) an area covered by a Presidential proclama-
 7 tion issued under section 4(a)(1) by an unconscion-
 8 able amount during the period beginning on the date
 9 the proclamation is issued and ending on the date
 10 specified in the proclamation; or

11 (2) an area covered by a Federal Trade Com-
 12 mission emergency order issued under section
 13 4(a)(2) by an unconscionable amount during the pe-
 14 riod beginning on the date the order is issued and
 15 ending on the date specified in the order.

16 **SEC. 3. JUSTIFIABLE PRICE INCREASES.**

17 (a) IN GENERAL.—The prohibition in section 2 does
 18 not apply to the extent that the increase in the price of
 19 the gasoline or petroleum distillate is substantially attrib-
 20 utable to—

21 (1) an increase in the wholesale cost of gasoline
 22 and petroleum distillates to a retail seller or reseller;

- 1 (2) an increase in the replacement costs for
2 gasoline or petroleum distillate sold;
3 (3) an increase in operational costs; or
4 (4) local, regional, national, or international
5 market conditions.

6 (b) OTHER MITIGATING FACTORS.—In determining
7 whether a violation of section 2 has occurred, there also
8 shall be taken into account, among other factors, the price
9 that would reasonably equate supply and demand in a
10 competitive and freely functioning market and whether the
11 price at which the gasoline or petroleum distillate was sold
12 reasonably reflects additional costs or risks, not within the
13 control of the seller, that were paid or incurred by the
14 seller.

15 **SEC. 4. EMERGENCY PROCLAMATIONS AND ORDERS.**

16 (a) IN GENERAL.—

17 (1) PRESIDENTIAL EMERGENCY PROCLAMA-
18 TIONS.—The President may issue an emergency
19 proclamation when an abnormal market disruption
20 has occurred or is reasonably expected to occur.

21 (2) FTC EMERGENCY ORDERS.—In the absence
22 of a Presidential proclamation under paragraph (1),
23 the Federal Trade Commission, by majority vote,
24 may—

1 (A) determine that an abnormal market
 2 disruption affecting more than 1 State has oc-
 3 curred or is reasonably expected to occur; and

4 (B) issue an emergency order if it makes
 5 such a determination.

6 (b) SCOPE AND DURATION.—

7 (1) IN GENERAL.—The emergency proclamation
 8 or order—

9 (A) shall specify with particularity—

10 (i) the period for which the proclama-
 11 tion or order applies; and

12 (ii) the event, circumstance, or condi-
 13 tion that is the reason such a proclamation
 14 or order is determined to be necessary; and

15 (B) may specify the area or region to
 16 which it applies, which, for the 48 contiguous
 17 States, may not be limited to a single State.

18 (2) LIMITATIONS.—An emergency proclamation
 19 or an order under subsection (a)—

20 (A) may not apply for a period of more
 21 than 30 consecutive days (renewable for a con-
 22 secutive period of not more than 30 days); and

23 (B) may apply to a period of not more
 24 than 7 days preceding the occurrence of an
 25 event, circumstance, or condition that is the

1 reason such a proclamation or order is nec-
2 essary.

3 **SEC. 5. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

4 (a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR
5 PRACTICE.—Section 2 of this Act shall be enforced by the
6 Federal Trade Commission as if the violation of section
7 2 were an unfair or deceptive act or practice proscribed
8 under a rule issued under section 18(a)(1)(B) of the Fed-
9 eral Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

10 (b) ACTIONS BY THE COMMISSION.—The Commis-
11 sion shall prevent any supplier from violating this Act in
12 the same manner, by the same means, and with the same
13 jurisdiction, powers, and duties as though all applicable
14 terms and provisions of the Federal Trade Commission
15 Act (15 U.S.C. 41 et seq.) were incorporated into and
16 made a part of this Act. Any entity that violates any provi-
17 sion of this Act is subject to the penalties and entitled
18 to the privileges and immunities provided in the Federal
19 Trade Commission Act in the same manner, by the same
20 means, and with the same jurisdiction, power, and duties
21 as though all applicable terms and provisions of the Fed-
22 eral Trade Commission Act were incorporated into and
23 made a part of this Act.

24 (c) REGULATIONS.—Not later than 180 days after
25 the date of enactment of this Act, the Federal Trade Com-

1 mission shall prescribe such regulations as may be nec-
 2 essary or appropriate to implement this Act.

3 **SEC. 6. PENALTIES.**

4 (a) CIVIL PENALTY.—

5 (1) IN GENERAL.—In addition to any penalty
 6 applicable under the Federal Trade Commission Act
 7 any supplier who violates this Act is punishable by
 8 a civil penalty of—

9 (A) not more than \$500,000, in the case of
 10 an independent small business marketer of gas-
 11 oline (within the meaning of section 324(c) of
 12 the Clean Air Act (42 U.S.C. 7625(c)); and

13 (B) not more than \$5,000,000 in the case
 14 of any other supplier.

15 (2) METHOD OF ASSESSMENT.—The penalty
 16 provided by paragraph (1) shall be assessed in the
 17 same manner as civil penalties imposed under sec-
 18 tion 5 of the Federal Trade Commission Act (15
 19 U.S.C. 45).

20 (3) MULTIPLE OFFENSES; MITIGATING FAC-
 21 TORS.—In assessing the penalty provided by sub-
 22 section (a)—

23 (A) each day of a continuing violation shall
 24 be considered a separate violation; and

1 (B) the Commission shall take into consid-
2 eration the seriousness of the violation and the
3 efforts of the supplier committing the violation
4 to remedy the harm caused by the violation in
5 a timely manner.

6 (b) CRIMINAL PENALTY.—

7 (1) IN GENERAL.—In addition to any penalty
8 applicable under the Federal Trade Commission Act,
9 the violation of this Act is punishable by a fine of
10 not more than \$1,000,000, imprisonment for not
11 more than 2 years, or both.

12 (2) ENFORCEMENT.—The criminal penalty pro-
13 vided by paragraph (1) may be imposed only pursu-
14 ant to a criminal action brought by the Attorney
15 General or other officer of the Department of Jus-
16 tice, or any attorney specially appointed by the At-
17 torney General of the United States, in accordance
18 with section 515 of title 28, United States Code.

19 **SEC. 7. DEFINITIONS.**

20 In this Act:

21 (1) ABNORMAL MARKET DISRUPTION.—The
22 term “abnormal market disruption” means there is
23 a reasonable likelihood that, in the absence of a
24 proclamation under section 4(a), there will be an in-
25 crease in the average price of gasoline or petroleum

1 distillates as a result of a change in the market,
2 whether actual or imminently threatened, resulting
3 from extreme weather, a natural disaster, strike,
4 civil disorder, war, military action, a national or
5 local emergency, or other similar cause, that ad-
6 versely affects the availability or delivery gasoline or
7 petroleum distillates.

8 (2) SUPPLIER.—The term “supplier” means
9 any person engaged in the trade or business of sell-
10 ing, reselling, at retail or wholesale, or distributing
11 gasoline or petroleum distillates.

12 (3) UNCONSCIONABLE AMOUNT.—The term
13 “unconscionable amount” means, with respect to
14 any supplier to whom section 2 applies, a significant
15 increase in the price at which gasoline or petroleum
16 distillates are sold or offered for sale by that sup-
17 plier that increases the price, for the same grade of
18 gasoline or petroleum distillate, to an amount that—

19 (A) substantially exceeds the average price
20 at which gasoline or petroleum distillates were
21 sold or offered for sale by that supplier during
22 the 30-day period immediately preceding the
23 sale or offer;

24 (B) substantially exceeds the average price
25 at which gasoline or petroleum distillates were

1 sold or offered for sale by that person's com-
2 petitors during the period for which the emer-
3 gency proclamation applies; and

4 (C) cannot be justified by taking into ac-
5 count the factors described in section 3.

6 **SEC. 8. EFFECTIVE DATE.**

7 This Act shall take effect on the date on which a final
8 rule issued by the Federal Trade Commission under sec-
9 tion 5(c) is published in the Federal Register.

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